



BACKGROUND

An often asked question in estate planning is where should the original will be stored (and yes there should only ever be one original will – and yes it must be wet signed).

The answer, generally, is somewhere secure, and at a location known by the executors; however never at home (including in a safe) due to the too regularly occurring tragedy of deaths at home because of (for example) fire or flood.

A further important question is how many types of wills are there.

Generally the answer is 4, namely the:

1. legal will (ie the document that regulates all personal wealth);
2. holistic wills (ie the documentation to regulate transfer of control of all non-personally owned assets, such as wealth owned via trusts, companies and superannuation);
3. living will (ie a medical, not legal, document outlining the types and conditions of medical care that a person would prefer in a given situation, prior to requiring health care – generally named an ‘advance health directive’ in Australia);
4. ethical will.

OVERVIEW OF ETHICAL WILLS

Many View posts explore each of the above concepts, other than the ethical will.

In many respects an ethical will is similar to a memo of directions or letter of wishes, at least in relation to the fact that it is not binding in a legal sense. In other words, it is only morally binding.

Ethical wills do however tend to have a deeper more philosophical focus than many memos of direction (that often focus on more practical issues).

At least according to Wikipedia, ethical wills have existed for thousands of years, particularly in religious disciplines as a tool to transmit a ‘tradition’s ethical teachings’. While some ethical wills are crafted as formal ethical treatises, most (even historically) are written in a personal writing style; intended for the private use of children and other beneficiaries under the estate plan, either directly or via the executors and trustees.

Ethical wills have been described as a ‘gift of spiritual health’ (Andrew Weil), with the goals of:

- A. linking a willmaker to their family and cultural history;
- B. clarifying their ethical and spiritual values;
- C. explaining their life purpose;
- D. communicating a legacy to future generations

In the book ‘A beginner’s guide to the end’, the 3 key questions said to form the foundation of an ethical will are:

- a. what are your values and beliefs;



- b. what format do you wish to adopt (eg written, audio, visual);
- c. what other ethical wills have you read for inspiration (eg see the book 'Ethical Wills: Putting Your Values on Paper' by Barry Baines).

SPECIFIC ASPECTS OF ETHICAL WILLS

Barry Baines, who is on record as confirming that an ethical will is:

1. a complementary text (to other estate planning documents such as a legal will and memo of directions) that communicates personal values, beliefs, blessings, and advice to relatives and to future generations;
2. often more meaningful to friends and family than any material possessions gifted;
3. a document that can help ensure a willmaker's wishes and hopes are 'on the record' - and not lost, ignored, or forgotten.

Baines, also suggests that the following topics can be considered in crafting an ethical will, namely:

- a. The importance of family and relationships
- b. The Importance of Education, Learning, Knowledge
- c. Respect For Life
- d. Learning From Mistakes
- e. Being Honest, Truthful, Sincere
- f. Giving and Receiving
- g. Importance of Humour
- h. Life Lessons
- i. Religious/Spirituality
- j. Reflections
- k. Hopes for the Future
- l. Conclusions

Another thinker in this area, Rabbi Reimer suggests the following additional themes might also be explored:

- A. Formative life events and experiences
- B. The era and world from which I came
- C. Influential people and mentors that shaped my life
- D. Some of my favourite possessions and the stories they contain
- E. A true definition of success



- F. How I feel as I look back over my life
- G. I ask for your forgiveness ...
- H. How grateful I am to you for...
- I. And, finally I want you to know I love you.

For those interested in more detailed versions of ethical wills, one book often mentioned is Tuesdays with Morrie by Mitch Albom (another View post provides a brief overview of some key lessons from this book).

An arguably more practical publication, created by 2 View team members, is the book 'Helpful Heuristics Handbook' (see here <https://viewlegal.com.au/product/helpful-heuristics-handbook/>).

TUESDAYS WITH MORRIE BY MITCH ALBOM

At the risk of glossing over some of the key lessons – or indeed completely missing lessons that may be highly relevant to others, our summary of the book is below.

1. Some of the key life questions to ask are:
 - a. Have you found someone to share your heart with?
 - b. Are you giving to your community?
 - c. Are you at peace with yourself?
 - d. Are you trying to be as human as you can be?
2. Ultimately, to get meaning in your life, you devote yourself to loving others, to your community and to creating something that gives you purpose and meaning.
3. Once you learn how to die, you learn how to live.
4. The reason for this is that by understanding how you will die, you can strip away all the white noise and focus only on the essentials. It gives a radically different perspective.
5. When someone is sick, they should ensure everyone around them continues to live their lives – otherwise, the disease they have will ruin more than just one life.
6. By throwing yourself into emotions, particularly painful ones, then you are able to experience the emotion fully and recognise it as an emotion. You can then detach from that emotion.
7. Aging is not decay. It's growth. The more you understand that you're going to die, the better you are able to live your life.
8. If you've lived a fulfilled life, you do not want to go back. You want to go forward. You want to see more and you want to do more. You need to find what's good and true and beautiful in your life now. Looking back makes you competitive and age can never be made a competitive issue. The truth is that part of you is every age that you have been through. By adopting this approach, you can never be envious of someone in another age because you've been there yourself.
9. One of the biggest problems in life is confusing what you want with what you need. The reality is that you do not really get any ultimate satisfaction from the things that you simply want.



10. Some of the keys to a successful marriage are respect, compromise, open talking about what goes on between you and a common set of values.
11. One of the biggest values you must have is in the belief about the importance of marriage.
12. In the beginning, we need others to survive, and at the end, we need others to survive. The secret is that in between we need others to survive as well.
13. Remember not to let go too soon, but don't hang on too long.
14. Embrace forgiveness, not only of others, but also ourselves.
15. Humans are ultimately different from other living organisms because as long as the love you helped create is still there, then the memories live on in the hearts and minds of those that you have touched and nurtured. Death ends life, and not a relationship.

CONCLUSION

As an ethical will is such a personal document, View deliberately does not provide any template for its creation.

This said, if an ethical will is prepared and not otherwise handed to the intended recipients immediately, it should be stored securely with all other original estate planning documents (eg legal will, enduring power of attorney and memo of directions).